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23973 7590 01/12/2010 DRINKER BIDDLE & REATH ATTN: INTELLECTUAL PROPERTY GROUP ONE LOGAN SQUARE 18TH AND CHERRY STREETS PHILADELPHIA, PA 19103-6996				
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1 RECORD OF ORAL HEARING

2
3 UNITED STATES PATENT AND TRADEMARK OFFICE

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6 BEFORE THE BOARD OF PATENT APPEALS
7 AND INTERFERENCES

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9
10 *Ex parte* KENT MASSEY

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12 Appeal No. 2009-007025
13 Application No. 10/003,196
14 Technology Center 2400

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16
17 Oral Hearing Held: December 3, 2009

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21 Before KENNETH W. HAIRSTON, JOHN C. MARTIN, and CARL
22 W.WHITEHEAD, JR., *Administrative Patent Judges*.

23
24 APPEARANCES:

25
26 ON BEHALF OF THE APPELLANT:

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33
34 The above-entitled matter came on for hearing on Thursday,
35 December 3, 2009, commencing at 9:38a.m., at the U.S. Patent and
36 Trademark Office, 600 Dulany Street, Alexandria, Virginia, before Dawn A.
37 Brown, Notary Public.

PROCEEDINGS

THE USHER: Calendar Number 7, Appeal Number 2009-7025.

Mr. Marshall.

JUDGE HAIRSTON: Okay. Thank you.

Good morning, Mr. Marshall.

MR. MARSHALL: Good morning, Your Honor.

JUDGE HAIRSTON: Do you have a business card for the record so she can make sure she spells your name correctly?

MR. MARSHALL: I'll just make a quick introduction of my client, Kent Massey. He is the inventor.

When I filed for the request for a hearing, it was primarily because the law of patentable subject matter was potentially going to change because of cases in the Federal Circuit. I wanted the flexibility to be able to come here in case there was a dramatic change.

As it turns out, the changes were very minor and not dramatic, but I am still going to argue the issue of patentable subject matter because I think it is, as I stated in my Brief, the subject matter that has been rejected is patentable subject matter. It is clearly matter that is embodied in an intangible medium and transforms something.

It is a set of -- sets of sequences of videos that are used to transform interactive video games. And so it is not simply playing music or video on a machine; it is something where there is a sequence of locations and logic such that depending upon different choices made by an interactive player, different sequences of these videos or different segments are selected from those sets

1 and interspersed into the particular scene in order to make it correspond to
2 decisions that were made earlier.

3 That, I believe, is as much patentable subject matter as any of the other
4 similar-type claims, including the claims in the two references that are cited as
5 being anticipated prior art.

6 I am willing to answer any further questions on that, but if not, I'd just as soon
7 turn to the prior art questions.

8 JUDGE HAIRSTON: All right. Do you have any questions about 101?

9 JUDGE WHITEHEAD: No, I don't.

10 MR. MARSHALL: There are two references that we have rejections
11 made as anticipation records. One is called Bejan. I can tell you quickly what
12 it does, and I'll contrast that to what the invention that is claimed here does.
13 In Bejan, you have the ability to let an audience decide which perspective -- in
14 other words, which actor in an interactive video -- they want to view the video
15 from. In practical application, that means from one or two or three or four
16 actors, you put a camera that is going to do the filming from that actor's
17 perspective.

18 The audience then can select, I want to see Actor 1 or Actor 2, and they
19 can change those selections by majority voting. But once they have done that,
20 once you've reached a point where they have selected one, that actor's
21 perspective carries through for the rest of the video.

22 Now, what you have to understand about that is all you're doing is running
23 these tracks simultaneously so that when the audience selects from Actor 1 to
24 Actor 2, you simply pick up at that second -- 20 seconds in where Camera 2 is
25 shooting. When they make the other change, the same thing is happening.

1 What is never happening is what is claimed in this invention, and that is at the
2 time of shooting at points in the shooting of scenes, you make sets that are
3 alternatives. So with the same props and the same type of actors, you can say,
4 okay, shoot that over again, but now with a different little dialogue or different
5 emotion. Shoot it twice. Shoot it three times.

6 The advantage of that is in contrast to the admitted prior art -- the admitted
7 prior art here is what is called coming back to neutral scenes. In any kind of
8 branch of entertainment, it just gets impossible if you don't bring it back to a
9 narrative loop. And you do that by coming to a neutral scene.

10 The problem with the neutral scene is that it is completely neutral. And so
11 once you're past that, there is no consequence of how you got there.

12 This is an inexpensive way to make scenes that could be interspersed
13 downstream of the neutral scene, the linking scene, that do have a consequence
14 of what path you took in order to get to that point. And that is really, as we
15 said, the improvement over the prior art and the part that we think is
16 patentable.

17 The second piece of prior art --

18 JUDGE MARTIN: Mr. Marshall, before we move on, I have a question
19 about Figure 3 of the first reference, Bejan.

20 MR. MARSHALL: Yes?

21 JUDGE MARTIN: Can you -- when you get down to the intersection
22 scene and then below that you've got Fourth Branch A and Fourth Branch B
23 and Fourth Branch C --

24 MR. MARSHALL: Yes.

1 JUDGE MARTIN: -- what do those branches represent? Are those --
2 does Fourth Branch A, does that -- is that the only branch available if
3 Character 1 was selected or do you get all three of those branches regardless
4 of which character is selected?

5 MR. MARSHALL: Well, from what -- the specification says you get
6 one. But even if you say you can switch back and forth, it does say at some
7 point you are stuck with the character. The selection ends at some point.
8 Even more importantly, what you're doing past that scene is you're simply
9 selecting a branch that you're going to see next. When you select that branch,
10 there is no ability to say, because of how you got to that branch, I'm going to
11 drop in some sets of variation scenes into branch, say, 4B. If I select 4B, no
12 matter which character, I'll see that whole sequence.
13 In our invention, if you select 4B, you may see within that 4B segment a set
14 that was -- a segment that was picked from a set that corresponds to how you
15 got to 4B and that is the difference.

16 JUDGE MARTIN: Okay. Back to the reference a second. So if I
17 understand you, you're saying that if the audience picks Character 1 and stays
18 with Character 1, when you get down to the fourth branch level there, you're
19 only going to have -- there is no choice to be made. There is really no branch.
20 It is just that -- it will be -- one of those three would be automatically picked?

21 MR. MARSHALL: There is a time sequence when a selection has to be
22 made. They don't stop the whole thing and say, you know, we pause. You
23 always have a default, which is there is going to be one selection made if there
24 is no alternative.

1 Yes, if you stayed with Character 1, you could get to branching act.

2 And if you made no selection, it would default to a selection.

3 JUDGE MARTIN: Just to make sure I've got this right. So those four
4 branches or those three branches -- A, B and C -- at the fourth level, you don't
5 get a different set of three depending on which character you pick? In other
6 words --

7 MR. MARSHALL: Yes -- no. Actually, that part is correct. If you pick
8 -- depending on what character you picked, you're going to get the scene shot
9 in, say, 3B, but it is going to be from the camera following Actor Number 2, if
10 that is what you've chosen.

11 These cameras are running simultaneously behind an actor. That is why
12 they talk about perspective of the actor. So yes, if you were following the
13 perspective of Character 1 and you selected Branch 2A and then Branch 3A,
14 you would see something that was slightly different from if you were
15 following Actor 2 and selected the same branches, because you would see the
16 same scene from a different camera.

17 JUDGE MARTIN: Then you get to the intersection scene.

18 MR. MARSHALL: Right.

19 JUDGE MARTIN: Okay. My question is, what happens -- you get
20 three branches coming out of the intersection scene?

21 MR. MARSHALL: My reading of that, at least from what is in the
22 specification, is that at some point you have stopped being able to select and
23 you have to carry a character forward, and I think that is what you're doing
24 there.

25 JUDGE MARTIN: Let's assume that is the case.

1 MR. MARSHALL: But even if you did, I mean, it is fair to say, what if
2 you allowed the audience to continuously select all the way through?

3 JUDGE MARTIN: Let's go back to assuming you're stuck with the
4 same character to the end, when you get to the intersection scene and you have
5 picked Character 1 and then you've followed a path down to that intersection
6 scene, what happens next? Do you get three choices at the fourth branch level
7 from that character's viewpoint?

8 MR. MARSHALL: Yeah.

9 JUDGE MARTIN: Okay. That is my question.

10 MR. MARSHALL: That character -- whichever character is selected,
11 that viewpoint, you still have the branching ability to select what to do at that
12 branch.

13 JUDGE MARTIN: So if you pick Character 1, you get the fourth
14 branch choices -- A, B and C -- would all be from that character's perspective.
15 But if you had picked a different character, you'd get a different set of
16 branches.

17 MR. MARSHALL: That is correct.

18 JUDGE MARTIN: Okay. Thank you.

19 MR. MARSHALL: Okay. The second reference, Shiels has to do with
20 something slightly different, maybe in some respect more relevant. What
21 Shiels does or what it is intended to do is to make some of the branching
22 decisions, not necessarily by the absolute discretion of the viewer, but by
23 doing certain things in the meantime in getting there.

24 One is building up this sort of character. In other words, you have to
25 accumulate some sort of power or recognition, which it measures on sort of a

1 sliding table. And by doing that, it will make certain choices available to
2 either branch once you've accumulated that. If you haven't gotten to that point,
3 you can't make that choice.

4 It has a few other new tricks that are perfectly fine, although not related
5 to this invention. It allows you to recall a segment you've seen before. It is the
6 Barney and Fred example where, you know, they have the discussion about I
7 skipped work because I wanted to do something else. If you recall that in a
8 later scene in terms of a prompt, that is essentially your branching decision.
9 By recalling it, I make a branch decision. Fred gets fired. Fred doesn't get
10 fired.

11 But once again, all you're doing is making the decision process by a
12 different -- a different way of making a decision process than simply pushing a
13 joystick and saying A, B or C. You're saying I want to recall that. In which
14 case, that made the decision. The branch is selected and Fred is now fired.

15 The problem I think that I've had, at least a bit, with the Examiner's
16 comprehension or seemed to be is not differentiating between branching and
17 scenes that are viewed in different order. They're related but they're not the
18 same. When you select a branch, you have effectively precluded the other
19 alternatives that you've denied -- that you didn't select. We also use the same
20 process of these alternative scenes where we're using episodes or acts that can
21 be viewed in different sequence.

22 The difference when you say the order in which it is viewed is when I
23 select one of three acts to see, I'm not eliminating the others. I'm making them
24 available for a downstream choice. And when I get to those, there are two

1 places where I would want to have these, what we call, alternative sets
2 available to be interspersed.

3 And that is, number one, when I want to be inside the episode
4 somewhere reflect something that happened before or, number two, the exit --
5 what we call the entry point and the exit point, the transitions. At those points,
6 you might be able to put some things in that make that transition seamless
7 rather than abrupt.

8 But really, as we said, the invention is the use of these alternative
9 scenes, things that are shot at the time of the basic filming where the director
10 uses them in the story line saying here are scenes that I'll shoot that I'm going
11 to put in a set associated with another scene. When I get there, I will look
12 back to how the character got there.

13 From that set, the recorder or the computer, whatever is playing it, will
14 without any decision at that point on behalf of the player interject the proper
15 one of that set so that I get a more seamless transition and the continuity that
16 what I did before the linking scenes or in the previous act do have a
17 consequence in the later ones.

18 I am free to answer any more questions.

19 JUDGE HAIRSTON: Okay. Thank you, Counselor.

20 MR. MARSHALL: Thank you, Your Honor.

21 (Whereupon, the proceedings at 9:52 a.m. were concluded.)